IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 606 of 1999
in
SPECIAL CIVIL APPLICATION No. 8343 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT TEXTILE & GENERAL LABOUR ORGANISATION & 1 - Appellant(s)

Versus

COMMISSIONER OF LABOUR & 3 – Defendant(s)

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Appearance :
MR D.S. VASAVADA for appellants.
Ms.Paurami Sheth, Assistant GOVERNMENT PLEADER for

respondents no.1 & 4.

None for respondent no.2.

MR DG CHAUHAN for Respondent no.3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 27/07/2005

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE R.S.GARG)

1.The present is an appeal of the dissatisfied appellants against order dated 15th April 1999 passed in Special Civil application No.8343 of 1998 by the learned Single Judge dismissing the writ application with certain clarifications.

2.The present appellants filed Special Civil application No.8343 of 1998 against the Commissioner of Labour and the Assistant Commissioner of Labour/ holding the office of the Registrar, under the Bombay Industrial Relations Act, 1946 (hereinafter referred to as “the Act”) the employer, namely, Modern Territowels Company Limited and the representative union, namely, Akhil Gujarat Cotton Mazdoor Sangh. The petitioners' submission in the writ application was that in a settlement arrived at between

respondent no.3-the representative union and the employer, respondent no.2, certain terms have been settled which are contrary to law and in fact give extra mileage to the representative union. The submission was that if the members of appellant no.1 are not members of the representative union, then under no settlement whether agreed or registered, an order could be issued against the non members of respondent no.3, to make payment of one day's salary and pay a sum of Rs.7/- per month as subscription for a period of three years. The prayers made in the writ application, though were differently worded, but the sum and substance was that respondent no.1 could not sit idle against the illegal action of deduction of subscription by respondent no.2 in favour of respondent no.3. The prayers also were that the settlement, agreement or arrangement which provide for direct deduction of subscription by respondent no.2 in favour of respondent no.3, be held to be invalid and a mandamus be issued against respondent no.2 not to deduct the subscription directly from the wages of the members of appellant no.1 in favour of respondent no.3.

3. The writ application was opposed by the representative union. It was submitted that the settlement is binding upon all and even the non

members cannot wriggle out of the registered settlement. It was the say of the representative union that if benefits flowing from the settlement are to be encashed in favour of non members, then the liabilities are also to be shared by the non members. After hearing learned counsel for the parties, the learned Single Judge observed that as the contesting respondents are not 'State' within the meaning of Article 12 of the Constitution of India, a writ could not be issued against them. The Court also observed that present appellant no.1 could not espouse the cause of the members. The learned Single Judge also recorded in para 4 of the judgement that the respondent union submitted before the Court that what is intended under clause 9 of the settlement is a monthly contribution to the union and is not intended to be the membership subscription as apprehended by the petitioners-appellants herein. The learned Single Judge also observed that the contesting respondent union was of the clear view that they were not compelling any workman to pay membership subscription, but were only asking for the contribution. Since after dismissal of the appeal, the appellant-union is before this Court.

4. Referring to section 3(25) of the Bombay Industrial Relations Act which defines 'member', and sections 3(17) and 3(18) of the Act, defining 'industrial dispute' and 'industrial matter', it was contended that section 58 of the Act provides for registration or record of an industrial dispute in a conciliation proceeding and as the donation/ contribution is not an industrial dispute qua non members or between the representative union and the non members, such a settlement would not be binding upon the non members, though the other terms settled are otherwise binding on the non members in view of section 114 of the Act. The submission is that if a settlement is arrived at between the representative union and the employer, then the said settlement would bind the workmen of that particular area, but any settlement which does not relate to any industrial dispute/ industrial matter, would not bind the non members. The submission is that para 9 of the settlement is not settlement of an industrial dispute, but is in relation to submission of the contribution by all the workers in favour of the representative union irrespective of the fact that whether they are the members or not. It is submitted that the Registrar is duty bound and obliged to see

that a settlement which is registered does not contain illegal conditions or does not give any additional mileage in favour of the representative union.

5. Mr.Chauhan, learned counsel for the respondent-representative union submitted that respondent no.3 does not propose to collect any subscription from the non members and under the circumstances if the word 'Lavajam' (subscription) has been wrongly included in the settlement, they had agreed before the learned Single Judge to make an application for correction in the settlement. His further submission is that if non members are entitled to receive benefit flowing from the settlement, then non members are obliged to make some payment to the representative union so that the representative union can meet its both ends and run with day to day expenses. His submission is that as the settlement arrived at between respondents no.2 and 3 is a private settlement between two private parties, who are neither 'State' within the definition of Article 12 of the Constitution of India nor are discharging any 'State' duties, a writ under Article 226 of the Constitution of India is not maintainable.

6. Before we enter into the merits of the matter we

would refer to the reliefs claimed in the matter. The appellant/ petitioners had prayed to the learned Single Judge that action be taken against respondent no.1, who was not preventing direct deduction of subscription by respondent no.2 in favour of respondent no.3, and that the settlement so far as it pertains to deduction of certain amount from the salary by respondent no.2 in favour of respondent no.3 be held to be invalid. It is to be seen that the relief though is against the settlement but it has been worded in such a classic manner that respondents no.1 & 4 are required to look into the matter to see that illegal activities are not performed by a representative union. If we hold that clause 9 of the settlement is bad and is contrary to law, then we will have to issue a direction to respondents no.1 and 4 to see that such terms and conditions incorporated in the settlement are not observed and executed and no deductions are made.

7. Learned counsel for the appellants have placed strong reliance upon the judgement of a learned Single Judge of the Bombay High Court in the matter of **Bennet, Coleman and Co. Ltd. Vs. Narayan Atmaram** reported in 2002 (95) Factory Law Reporter 544 to

contend that irrespective of the fact that certain persons are members or not, every worker in the area would be entitled to the benefits settled between the employer and the representative union. It on the strength of the membership it is in a position to settle their disputes, then it cannot say that benefits would flow in favour of its members only. We will agree with the submissions of Mr.Vasavda because law says that in a particular area there can be more than one trade union, but one which has higher strength of the members can be registered as representative union. A representative union under the law is entitled to enter in a dialogue with an employer and negotiate on various subjects relating to industrial dispute and industrial matters. The moment certain industrial disputes are settled and a settlement is arrived at then such settlement becomes binding not against the members of the representative union only, but it binds every worker working with the establishment or in the said area. We must hold that to get benefits of the settlement, a worker is not required to be a member of the representative union nor is required to pay any subscription to the representative union.

8. Clause 9 of the settlement says that one day arrears

of the salary would be paid by all the workers in the area to the representative union and the amount shall be collected by respondent no.2 for and on behalf of respondent no.3. It further says that a sum of Rs.7/- shall be deducted from the monthly salary of each workman towards subscription of the membership by respondent no.2 for being paid to respondent no.3. This part of the settlement between employer and employee, in our considered opinion cannot be termed to be an industrial dispute. Section 3(17) and section 3(18) of the Act define 'industrial dispute' and 'industrial matter'. These provisions read as under:

> “3. In this Act unless there is anything repugnant in the subject or context --
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> (1) to (16) xxx xxx
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> “(17) Industrial dispute” means any dispute or difference between an employer and employee or between employers and employees or between employees and employees and which is connected with any industrial matter;
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> (18)”Industrial matter” means any matter relating to employment, work, wages, hours of

work, privileges, rights or duties of employers or employees or the mode, terms and conditions of employment, and includes--

(a) all matters pertaining to the relationship between employers and employees, or to the dismissal or non-employment of any person;

(b) all matters pertaining to the demarcation of function of any employees or classes of employees;

(c) all matters pertaining to any right or claim under or in respect of or concerning a registered agreement or a submission, settlement or award made under this Act;

(d) all questions of what is fair and right in relation to any industrial matter having regard to the interest of the person immediately concerned and or the community as a whole;”

9. From the definition of these two clauses it would clearly appear that a matter relating to subscription or some contribution or some donation to be paid by member/ workman or by a non member-workman would not come within the mischief of the industrial dispute or industrial matter. Section 58 of the Act says that if settlement of an **industrial dispute** is arrived at in a conciliation proceeding a

memorandum of such settlement shall be drawn in the prescribed form by the Conciliator and signed by the employer and representatives of the employees. After the settlement is signed by the parties Conciliator shall send the same to the Registrar and the Chief Conciliator, after the Registrar receives the same he shall record such settlement in the register of agreements and thereafter shall publish the same. The effect of such settlement is given under section 114 of the Act. Section 114 of the Act says that a registered agreement or settlement, submission or award shall be binding upon all persons who are parties thereto. An Award registered under section 58 of the Act to have its fullest binding effect under section 114 of the Act, must be in relation to an industrial dispute. If anything beyond industrial dispute is settled between employer and representative union or union and its members then, such settlement would have no binding effect. We are saying all this because the question has been raised before us and the petitioners/ appellants are apprehending that in view of section 114 of the Act, they would have no forum to go. In our opinion, the law as it stands makes it very clear that if an industrial dispute relating to an industrial matter

is settled and such settlement is registered by Registrar, then only such registered settlement would have binding effect.

10.Learned counsel Mr.Vasavada submitted that in view of the opinion expressed by this Court he be allowed to ask the representative union to make a reference to the Labour Court to consider the validity and legality of clause 9 of the settlement, as according to him because of the presence of a representative union no other trade union or employee would be entitled to make a reference. To this, Mr.Chauhan submits that it would not be possible for the union to make a reference to the Labour Court to consider the correctness of clause 9 of the settlement. He, however, agrees that if appellant no.1 or members of appellant no.1 make(s) an application to the Labour Court for determination of the question, then the respondent no.3 would not object to the maintainability of such application. He, however, maintains that this Court should not interfere in the matter and leave the appellants to approach the proper forum.

11. Taking into consideration that the learned

Single Judge has refused to interfere in the matter because a writ was sought against respondents no.2 and 3 for not enforcing a private settlement we do not interfere in the matter. However, we make it clear that the law laid down by us and the interpretation put forth shall be binding. If the petitioners/ appellants make an application to the Court, then no objection would be allowed to be raised by any person/ authority to the maintainability of the application and the Court concerned shall decide the matter on its own merits.

12. By an interim order dated 06.07.1999 while disposing of Civil Application No.3979 of 1999 this Court had directed that respondents/ respondent no.2-company to deduct an amount of Rs.7/- per month from the wages of the workmen, and that the amount deducted from the wages of such workmen, who are not members of the representative union, who will give in writing signed by each one of them that they are not members of respondent no.3, the deducted amount shall be kept by the company in a separate account. As the question has yet not been finally decided, we direct respondent no.3 to remit the total amount, within a period of three months from the date of receipt of a copy of this judgement to the

concerned Labour Court so that the amount is disbursed or paid to the party entitled to it in accordance with the final directions of the Labour Court. The Appeal is disposed of accordingly. No order as to costs.

(R.S. GARG, J.)

(RAVI R. TRIPATHI, J.)

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